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No. ____

In The

Supreme Court of the United States

October Term, 1997

CYPRUS BAGDAD COPPER CORPORATION; CYPRUS AMAX MINERALS COMPANY; RANDY SCOTT, husband; JANE DOE SCOTT, wife; GARY HUTCHINSON, husband; KATHLEEN HUTCHINSON, wife, aka JANE DOE HUTCHINSON; JANETTE BUSH, wife; JOHN DOE BUSH, husband; JOSEPH MORTIMER, husband; JANE DOE MORTIMER, wife; JACK McKEON, husband; JANE DOE McKEON, wife; PAUL AUSTIN, husband; JANE DOE AUSTIN, wife; RAYMOND BRAMLETT, husband; JANE DOE BRAMLETT, wife; LLOYD FLANNIGAN, husband; JANE DOE FLANNIGAN, wife,

Petitioners,

v.

MELTON NELSON; LANITA NELSON,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does Section 2 of the Federal Arbitration Act permit an arbitration agreement, valid under state law, to be invalidated under a federal "knowing" agreement standard?

LIST OF ALL PARTIES

The parties to the proceeding in the Ninth Circuit are as set forth in the caption of this case.

Corporate petitioner Cyprus Bagdad Copper Corporation is a wholly owned subsidiary of Cyprus Climax Metals Company and has no non-wholly owned subsidiaries. Cyprus Climax Metals Company is a wholly owned subsidiary of Cyprus Metals Company, which is a wholly owned subsidiary of petitioner Cyprus Amax Minerals Company.

Corporate petitioner Cyprus Amax Minerals Company has no corporate parent and the following non-wholly owned subsidiaries: Amax Gold Inc.; Cyprus Pima Mining Company; Cyprus Plateau Mining Corporation; Las Quintas Serenas Water Co.; Oakbridge Pty Limited; PT Cyprus Amax Iriana; Rio Blanco Exploration, LLC; Sociedad Contractual Minera El Abra; Sociedad Minera Cerro Verde S.A.; and Yankeetown Dock Corporation.

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CITATION BELOW

The opinion of the Ninth Circuit is reported as *Nelson, et al. v. Cyprus Bagdad Copper Corporation, et al.*, 119 F.3d 756 (9th Cir. 1997). (App. 1-19)

STATEMENT OF JURISDICTION

The Ninth Circuit's opinion was entered on July 10, 1997. Its order denying the petition for rehearing was filed October 6, 1997. (App. 20-21) This Court has jurisdiction to review on a writ of certiorari the judgment below by virtue of 28 U.S.C. §1254.

STATUTE INVOLVED

Section 2 of the Federal Arbitration Act provides that written agreements to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." *9 U.S.C. §2.* (App. 24)

STATEMENT OF THE CASE

A. Proceedings Below

Nelson's[1] complaint was filed in federal district court and alleged, *inter alia,* that his discharge from employment

[1] Presumably because Arizona is a community property state, the individual parties' spouses were also named as parties in the complaint. Their inclusion is not material to the issues

violated the Americans With Disabilities Act, 42 U.S.C. §12101 *et seq.*, and the Arizona Civil Rights Act, A.R.S. §41-1401 *et seq.*[2] The district court dismissed these claims on summary judgment, holding that they were subject to an arbitration agreement valid *under Arizona law*. A split panel of the Ninth Circuit reversed and held that, *as a matter of federal law*, the arbitration agreement could not be enforced against Nelson's employment discrimination claims because he had not knowingly agreed to arbitrate them.

B. Material Facts

Cyprus Bagdad Copper Corporation (Cyprus) discharged Nelson from employment in October 1994 following his refusal to work a rotating shift. About a year before his discharge, Nelson received a revised employee handbook from Cyprus containing a Complaint Resolution Policy culminating in final and binding arbitration. (App. 30-35)

The handbook expressly advised that:

1. The Open Door Policy and the Complaint Resolution Policy are the sole and exclusive procedures for the processing and resolution of any problem, controversy, complaint, misunderstanding or dispute between an

---

presented and references to "Nelson" hereinafter will refer to Melton Nelson, the former employee of Cyprus, or to him and his spouse, as required by the context.

[2] The complaint also alleged post-discharge tortious conduct which was dismissed for lack of subject matter jurisdiction and is not in issue here.

employee and Cyprus Bagdad. This includes any claim that the provisions of this handbook have been violated and any claim that any state or federal statute or law applicable to your employment has been violated.

(App. 30)

2. The arbitrator shall have authority to decide statutory issues, including those arising under equal employment opportunity laws.

(App. 34)

3. The Open Door Policy and the Complaint Resolution Policy described in this Handbook are the sole and exclusive procedures for the processing and resolution of any problem, controversy, complaint, misunderstanding or dispute that may arise concerning any aspect of your employment or termination of employment, including any dispute arising out of or based upon any state or federal statute or law applicable to your employment, and including any dispute concerning a claim that the provisions of this Handbook have been violated. You are precluded from filing any action with any court concerning any matter which could have been addressed through these procedures.

(App. 36)

The last two pages of the handbook are identical and expressly acknowledge receipt of the handbook. (App. 37-40) Nelson signed and returned to Cyprus one of these pages. (App. 41-42)

C. Basis for Federal Jurisdiction

The district court had jurisdiction pursuant to 28 U.S.C. §1331 and 42 U.S.C. §§2000e-5(f)(3) and 12117(a).

REASONS TO ALLOW THE WRIT

This petition should be granted because the Ninth Circuit has applied the Federal Arbitration Act, 9 U.S.C. §1 *et seq.* (FAA), in conflict with relevant decisions of this Court and decisions of other United States courts of appeals. The opinion below completely disregards the requirements of §2 of the FAA and the liberal federal policy favoring arbitration agreements. It also undermines the analytical framework established by this Court for resolving questions concerning the validity of agreements to arbitrate.

A. Conflict With Decisions of This Court

This Court has repeatedly held that §2 mandates that "ordinary state-law principles that govern the formation of contracts" determine whether a party has agreed to arbitrate particular matters. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, ___, 115 S. Ct. 1920, 1924 (1995). See, also, *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, ___, 116 S. Ct. 1652, 1656 (1996); *Perry v. Thomas*, 482 U.S. 483, 492 n.9, 107 S. Ct. 2520, 2527 n.9 (1987).

The liberal federal policy favoring arbitration applies to agreements to arbitrate employment discrimination claims. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 111 S. Ct. 1647 (1991).

The Ninth Circuit, however, has disregarded state law and applied a purported principle of federal law when determining whether a valid arbitration agreement applicable to employment discrimination claims exists. The opinion below purports to follow *Prudential Insurance Co. Of America v. Lai*, 42 F. 3d 1299 (9th Cir. 1994), *cert. denied*, 116 S. Ct. 61 (1995), in which the Ninth Circuit refused to enforce an arbitration provision in a National Association of Securities Dealers manual, holding that the employees, who had received and signed only a U-4 form, had not knowingly agreed to arbitrate their employment discrimination claims because they had not received the manual containing the arbitration provision and the U-4 form had not advised them that employment claims would be subject to arbitration.

In stark contrast to the facts in *Lai*, here the handbook received by Nelson contained the arbitration provision and expressly advised him both that employment discrimination claims would be subject to mandatory arbitration and that he would be precluded from pressing such claims in court. Nevertheless, the Ninth Circuit, in reliance upon the federal law principle it first recognized in *Lai*, refused to enforce the arbitration provision because it was not on the last page of the handbook received by Nelson, i.e., the page he actually signed and which expressly acknowledged his receipt of the entire document. (App. 12-13) Under the panel's rationale, no arbitration provision included in a broader agreement would be enforceable unless the provision appeared on the signature page of the agreement.

The decision of the panel below is an extreme example of judicial hostility to arbitration – a hostility this court has characterized as a vestige of an unenlightened era. *Gilmer,* 500 U.S. at 30, 111 S. Ct. at 1654. The opinion below undermines *Gilmer* by seizing upon a proported principle of federal law to find that Nelson never entered into an agreement to arbitrate. In so doing, the Ninth Circuit has completely disregarded controlling state law that this Court has mandated be applied.

The Arizona Supreme Court has held that a unilaterally promulgated employee handbook may become part of the employment agreement and, if an employer wishes to avoid that result, it need only include a disclaimer of contract status in the handbook. *Leikvold v. Valley View Community Hospital,* 141 Ariz. 544, 548, 688 P. 2d 170, 174 (1984). The Cyprus employee handbook contains no such disclaimer. The Arizona Supreme Court has also stated that "[e]mployment contracts . . . are the best and most typical examples of unilateral contracts," *Wagner v. City of Globe,* 150 Ariz. 82, 85, 722 P. 2d 250, 253 (1986), and that "[o]ne widely accepted means of modifying [them] is use or publication of personnel manuals, guides, or rules by employers." 150 Ariz. at 86, 722 P. 2d at 254. The Arizona Court of Appeals has applied these principles to enforce modified employee handbooks unilaterally issued. *Duncan v. St. Joseph's Hospital,* 183 Ariz. 349, 354 n.3, 903 P. 2d 1107, 1112 n.3 (App. 1995).[3]

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[3] As dissenting Judge Rymer pointed out below, Nelson has not disputed the district court's conclusion that the handbook had become part of his employment contract under Arizona law. (App. 19)

In summary, the decision below is in conflict with decisions of this Court in at least three fundamental respects: (1) it held that federal and not state law determines the existence of a valid agreement to arbitrate employment discrimination claims; (2) it substantially undermined this Court's holding in *Gilmer* that arbitration agreements *do* apply to federal employment discrimination claims; (3) it gave mere lip service to the federal policy favoring arbitration while, in effect, disregarding that policy in the context of employment discrimination claims.

B. Conflict With Other U.S. Courts of Appeals

The Ninth Circuit acknowledged its conflict with the decision of the Eighth Circuit in *Patterson v. Tenet Health Care, Inc.*, 113 F. 3d 832 (8th Cir. 1997), wherein a unilaterally issued employee handbook containing an arbitration provision was enforced to require arbitration of employment discrimination claims. The panel below summarily distinguished *Patterson*, stating that the Eighth Circuit simply had not adopted the *Lai* requirement that the existence of a knowing agreement to arbitrate employment discrimination claims be determined under federal law. (App. 14 n.12)

The decision below ignored and is also in conflict with the Fourth Circuit's opinion in *O'Neil v. Hilton Head Hospital*, 115 F. 3d 272, 275 (4th Cir. 1997), wherein an arbitration provision in an employee handbook was enforced to compel arbitration of federal employment claims under the Family and Medical Leave Act, 29 U.S.C. §2601 *et seq.*

CONCLUSION

Given the widespread inclusion of arbitration provisions in employee handbooks, the split in the circuits created by the Ninth Circuit's unique frustration of such provisions, and the Ninth Circuit's disregard of this Court's decisions, this Court should allow this petition.

Respectfully submitted,

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APPENDIX

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MELTON NELSON; LANITA NELSON, *Plaintiffs-Appellants*, v. CYPRUS BAGDAD COPPER CORPORATION; CYPRUS AMAX MINERAL COMPANY; RANDY SCOTT, husband; JANE DOE SCOTT, wife; GARY HUTCHINSON, husband; KATHLEEN HUTCHINSON, wife, aka Jane Doe Hutchinson; JANETTE BUSH, wife; JOHN DOE BUSH, husband; JOSEPH MORTIMER, husband; JANE DOE MORTIMER, wife; JACK MCKEON, husband; JANE DOE MCKEON, wife; PAUL AUSTIN, husband; JANE DOE AUSTIN, wife; RAYMOND BRAMLETT, husband; JANE DOE BRAMLETT, wife; LLOYD FLANNIGAN, husband; JANE DOE FLANNIGAN, wife, *Defendants-Appellees.*	No. 95-17083 D.C. No. CV-95-00237-SMM OPINION

Appeal from the United States District Court
for the District of Arizona
Stephen M. McNamee, District Judge, Presiding

Argued and Submitted
December 13, 1996 – San Francisco, California

Filed July 10, 1997

Before: Stephen Reinhardt and Pamela Ann Rymer, Circuit Judges, and Jack E. Tanner, District Judge.*

Opinion by Judge Reinhardt; Dissent by Judge Rymer

COUNSEL

Michael E. Medina, Jr., Kimble, Gothreau & Nelson, Tucson, Arizona, for the plaintiffs-appellants.

William M. Shattuck, Phoenix, Arizona, for the defendants-appellees.

OPINION

REINHARDT, Circuit Judge:

We are asked on this appeal to determine whether arbitration provisions contained in an Employee Handbook unilaterally issued by an employer serve to waive an employee's rights to a judicial determination of his claims under the Americans with Disabilities Act of 1990 and the Arizona Civil Rights Act.

I. FACTS

Plaintiff Melton Nelson worked as a full-time employee of Cyprus Bagdad Copper Corporation (Cyprus) for nineteen years, most recently as a Senior Maintenance Technician in the Electrical Department at the company's mine in Bagdad, Arizona. He asserts that he worked only day shifts prior to August 1994, when

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* The Honorable Jack E. Tanner, Senior United States District Judge for the Western District of Washington, sitting by designation.

Cyprus initiated an extensive reorganization of its Bagdad mining operations. At that time, Cyprus announced its intention to eliminate over 100 salaried and hourly positions through a voluntary "Severance Enhancement Program" and, to the extent necessary, through involuntary layoffs and employee reclassifications – with those employees who volunteered receiving a better severance package than those who did not. Nelson also asserts that while considering voluntary severance he asked his supervisor how his department, and specifically, his position, might be affected by the changes. He contends that his supervisor told him that no major changes were planned, and, for that reason, he did not seek voluntary severance.

After the deadline for voluntary severance passed, the Electrical Department was reorganized and Nelson was required to work rotating 12-hour shifts. He contends that he notified his supervisor that he had previously experienced medical difficulties in working rotating shifts. After making some initial efforts to accommodate him, Cyprus terminated Nelson's employment in October 1994.[1]

THE HANDBOOK

In June 1993, a little over a year before Nelson was fired, Cyprus issued an Employee Handbook to each

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[1] The complaint was filed by Nelson and his wife. For purposes of this opinion, we treat Nelson as the plaintiff. *See infra* note 12.

employee. The Handbook contained a grievance resolution procedure that Cyprus asserts has applied to all employees since July 1, 1993, the effective date set forth in the Handbook. Nelson signed an acknowledgment that he had received the Handbook, and agreed to read and understand its contents, and to contact his supervisor if he had any questions:

> I have received a copy of the Cyprus Bagdad Copper Corporation Handbook that is effective July 1, 1993 and understand that the Handbook is a guideline to the Company's policies and procedures. I agree to read it and understand its contents. If I have any questions regarding its contents I will contact my supervisor or Human Resources Representative.

The Handbook contains a section entitled "Problem Solving Process." That section spells out two procedures for resolving employment disputes: (1) the "Open Door Policy" which provides informal access to supervisors and members of the company's management team and (2) the "Complaint Resolution Policy" which contains the more formal grievance process culminating in arbitration.

The "Scope of Employee Handbook" section of the Employee Handbook provides as follows:

> The Open Door Policy and the Complaint Resolution Policy described in this Handbook are the sole and exclusive procedures for the processing and resolution of any problem, controversy, complaint, misunderstanding or dispute that may arise concerning any aspect of your employment or termination of employment including any dispute arising out of or based

> upon any state or federal statute or law applicable to your employment, and including any dispute concerning a claim that the provisions of the Handbook have been violated. You are precluded from filing any action with any court concerning any matter which could have been addressed through these procedures.[2]

Under the Complaint Resolution Policy, an employee must submit a written complaint to his or her supervisor within ten days of the occurrence "that gave rise to your problem." If dissatisfied with the supervisor's response, the employee may appeal to his or her department manager within five days of receiving that response. If still dissatisfied, the Complaint Resolution Policy allows an appeal to the Vice President, within five days of receiving the department manager's response. The decisions of the Vice President are final *unless* a claim involves corrective action, discharge, or a claim that the Handbook's "Equal Opportunity/Non-harassment policy" has been violated. In these cases the employee "may appeal to arbitration." The appeal to arbitration must be made in writing and

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[2] Similarly, the "Problem Solving Process" section of the Handbook states that

> [t]he Open Door Policy and the Complaint Resolution Policy are the sole and exclusive procedures for the processing and resolution of any problem, controversy, complaint, misunderstanding or dispute between an employee and Cyprus Bagdad. This includes any claim that the provisions of this Handbook have been violated and any claim that any state or federal statute or law applicable to your employment has been violated.

submitted to the company's Human Resources Department within ten days of receiving the Vice President's response.

PROCEDURAL HISTORY

Two days after he was fired, Nelson sent a letter to Randy Scott, Vice-President and General Manager, complaining that his termination was "not only wrong but illegal."[3] Scott sent a written response one week later, in which he supported the termination and informed Nelson that

> [i]f you are not satisfied with this response, the next step of the Complaint Resolution Policy requires that you appeal to arbitration. The appeal to arbitration must be in writing and must be submitted to the Human Resources Department within 10 calendar days after you receive this response to your appeal.

According to Janette Bush, Manager of Human Resources at Cyprus, Nelson informed her both on the day he was fired and two days later that, upon advice of counsel, he would not appeal his termination to arbitration.

Instead, Nelson and his wife filed a complaint in the United States District Court alleging that the defendants had violated the Americans with Disabilities Act ("ADA"). The complaint also alleged a violation of the Arizona Civil Rights Act ("ACRA"), and asserted a

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[3] In their answering brief, defendants characterize Nelson's letter as an appeal of his termination "consistent with the Complaint Resolution Policy." Nelson's letter, however, makes no mention of the Complaint Resolution Policy.

number of other pendent state claims. Named as defendants were Cyprus Bagdad Copper Corporation, Cyprus Amax Minerals Company, and several Cyprus employees. The district court granted summary judgment to all defendants holding that the arbitration clause contained in Cyprus' Employee Handbook was enforceable and that Nelson had knowingly and voluntarily agreed to waive his rights to a judicial forum. The Nelsons appeal.

II. ANALYSIS

Defendants moved for summary judgment on the ground that Nelson's claims were foreclosed by his agreement to submit the disputes to the grievance and arbitration procedures set forth in the Cyprus Bagdad Copper Corporation's Employee Handbook. The district court analyzed the arbitrability of Nelson's claims under the waiver standard for Title VII claims we set forth in our opinion in *Prudential Insurance Co. of America v. Lai*, 42 F.3d 1299 (9th Cir. 1994), and held that "no genuine issue of material fact exists regarding whether Nelson knowingly and voluntarily waived his rights to file a statutory discrimination claim." Nelson argues on appeal that, contrary to the conclusion reached by the district court, there was no valid waiver of any of his statutory rights under the Americans with Disabilities Act and the Arizona Civil Rights Act, and that, accordingly, the district court erred in granting summary judgment. We agree.[4]

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[4] Nelson also argues that Section 1 of the Federal Arbitration Act ("FAA") broadly exempts employment contracts from its coverage. *See* Matthew W. Finken, *"Workers' Contracts" Under the United States Arbitration Act: An Essay in*

Prior to 1991, when the Supreme Court announced its decision in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991), federal anti-discrimination laws, specifically Title VII, had been "interpreted to prohibit any waiver of . . . statutory remedies in favor of arbitration, even a knowing waiver." *Lai*, 42 F.3d at 1304 (citing *E.E.O.C. v. Children's Hospital Medical Center*, 719 F.2d 1426, 1431 (9th Cir. 1983)). That interpretation found its source in a line of Supreme Court cases beginning with *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974). In *Gilmer*, however, the Supreme Court held that individuals generally may contractually agree to arbitrate employment disputes and thereby waive certain statutory rights to which they would otherwise be entitled. *Lai*, 42 F.3d at 1303.

However, Congress can and sometimes does preclude waivers of a plaintiff's rights under a particular statute. *Kuehner v. Dickinson & Co.*, 84 F.3d 316, 319 (9th Cir. 1996). Congressional intent to preclude waivers of statutory rights may be found in the text or legislative history of the act in question, or in an "inherent conflict" between the purported waiver and the act's underlying purposes.

Historical Clarification, 17 Berkeley J. Emp. & Lab. L. 282 (1996). Similarly, he contends that Arizona state law exempts employment contracts from coverage under its arbitration provisions. Accordingly, Nelson asserts that the arbitration clause at issue is unenforceable. In *Gilmer*, the Supreme Court expressly reserved the question whether Section 1 of the FAA broadly exempts employment contracts. 500 U.S. at 25 n.2. The scope of the Section 1 exemption remains an open question in this circuit, as well. *See Mago v. Shearson Lehman Hutton*, 956 F.2d 932, 934 (9th Cir. 1992). Because we reverse on other grounds, we again decline to reach that question, once more leaving it for another day.

Gilmer, 500 U.S. at 26. Here, we address the subject of Congressional intent, keeping in mind that "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." *Id.* (quoting *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24 (1983)).

When the question is whether a plaintiff may agree to waive a right to a judicial forum in favor of arbitration, it is the plaintiff's burden to demonstrate Congressional intent to forbid such a waiver. *Id.* In *Gilmer*, the Court concluded that the plaintiff had not demonstrated that Congress, in enacting the Age Discrimination in Employment Act ("ADEA"), had intended generally to preclude all waivers of the right to a judicial forum. We extended the *Gilmer* holding to claims brought under Title VII in *Mago v. Shearson Lehman Hutton*, 956 F.2d 932, 935 (9th Cir. 1992), holding that the plaintiff had not "met her burden of showing that Congress, in enacting Title VII, intended to preclude arbitration of claims under the Act."[5] We assume, *arguendo*, that the *Gilmer* holding regarding the enforceability of valid compulsory arbitration agreements applies in the context of the Americans with Disabilities Act as well.[6]

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[5] The plaintiffs in *Lai* argued that the *Gilmer* holding, and its extension to Title VII claims in our decision *Mago*, had been overruled by the Civil Rights Act of 1991. We found it unnecessary to reach that question in *Lai*, however, given our resolution of the appeal. *Lai*, 42 F.3d at 1303 n.2. We likewise find it unnecessary to do so here.

[6] In this appeal, Nelson does not argue that the legislative history of the ADA demonstrates that Congress intended to preclude waivers of statutory rights provided by the act or that

Nelson does not argue on appeal that all mandatory arbitration agreements are unenforceable under the ADA.[7] Instead, he argues that he may be required to arbitrate his claims under the ADA only if he "knowingly and voluntarily" agreed to waive his right to a judicial forum.[8] Just as Congress may entirely preclude a waiver

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Gilmer's limiting of *Gardner-Denver* should not be extended to claims under the ADA. *See* H.R.Rep. No. 101-485, pt. 3, at 76-77 (1990), *reprinted in* 1990 U.S.C.C.A.N. 445, 499-500 (stating that "any agreement to submit disputed issues to arbitration, whether in the context of a collective bargaining agreement or in an employment contract, does not preclude the affected person from seeking relief under the enforcement provisions of this Act" and stating that "the approach articulated by the Supreme Court in *Alexander v. Gardner-Denver Co.* applies equally to the ADA"); H.R. Conf. Rep. No. 101-596, at 89 (1990), *reprinted in* 1990 U.S.C.C.A.N. 565, 598 (stating that "[i]t is the intent of the conferees that the use of these alternative dispute resolution procedures is completely voluntary" and adopting by reference "the statement of the House Judiciary Report [H.R. 101-485, pt. 3, at 76-77] regarding this provision"); *see also Developments in the Law – Employment Discrimination*, 109 Harv.L.Rev. 1568, 1677 (1996). Accordingly, we take no position on the issue, and assume, for the purposes of this appeal that *Gilmer* extends to claims brought under the ADA.

[7] By "mandatory arbitration agreements" we mean arbitration provisions that are contained in a general agreement or instrument of some kind and that mandate arbitration in the event that specific future disputes arise under the more general agreement. We do not consider in this opinion the validity of the narrower and more limited form of arbitration agreement that is entered into for the purpose of providing that a particular dispute that has already arisen will be submitted to arbitration and establishing the procedures governing the resolution of that particular dispute.

[8] The parties dispute whether compelling Nelson to submit his statutory claims to the grievance and arbitration procedures

of the plaintiff's statutory rights, it may create other more limited restrictions on the enforcement of arbitration agreements. *Kuehner*, 84 F.3d at 319. In *Lai*, we held that it was "apparent from the text and legislative history of Title VII" that Congress had required "at least a knowing agreement to arbitrate employment disputes before an employee may be deemed to have waived the comprehensive statutory rights, remedies and procedural protections prescribed in Title VII and related state statutes." *Lai*, 42 F.3d at 1304. In the case before us, the parties agree that the waiver analysis set forth in *Lai* applies equally in the context of the ADA. They are correct. Just as a knowing agreement to arbitrate disputes covered by the act is required by Title VII, so too a knowing agreement is required under the ADA.[9]

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established in the Handbook would entail more than a mere waiver of the right to a judicial forum. Nelson argues that the company's arbitration mechanism would, in addition, shorten the statute of limitations and deprive him of attorneys' fees and exemplary damages. We need not resolve that dispute here: for purposes of this decision, we assume that the arbitration clause at issue constitutes a waiver of the right to a judicial forum only. If in fact it purports to waive other statutory rights as well, the waiver is *a fortiori* invalid, given the result we reach here.

[9] The legislative history relied on in *Lai* to support its conclusion that there must be "at least a knowing agreement to arbitrate employment disputes before an employee may be deemed to have waived" a judicial determination of his or her rights under Title VII mirrors the legislative history to the enactment of 42 U.S.C. § 12212, the alternative dispute resolution provision of the ADA. *Compare Lai*, 42 F.3d at 1304 (quoting H.R. Rep. 102-40, pt. 1, at 97 (1991), *reprinted in*, 1991 U.S.C.C.A.N. 549, 635), *with* H.R.Rep. No. 101-485, pt. 3, at 76-77 (1990), *reprinted in* 1990 U.S.C.C.A.N. 445, 499-500, *and* H.R. Conf. Rep. No. 101-596, at 89 (1990), *reprinted in* 1990

The undisputed facts in the record before us demonstrate that Nelson did not enter into a "knowing agreement" to arbitrate his claims under the ADA.[10] First, we conclude that the acknowledgment form signed by Nelson does not suffice as a valid waiver under *Lai*. When Nelson was given a copy of the revised employee Handbook, he signed an acknowledgment of receipt. Nothing in that acknowledgment notified Nelson either that the Handbook contained an arbitration clause or that his acceptance of the Handbook constituted a waiver of his right to a judicial forum in which to resolve claims covered by the ADA. Under the express terms of the acknowledgment, Nelson agreed only to "read and understand" the Handbook. He did *not* agree to be bound by its provisions. Certainly, nothing in the acknowledgment form notified him that by agreeing to "read and understand," he was additionally agreeing to waive any rights or remedies afforded him by civil rights statutes

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U.S.C.C.A.N. 565, 598. Accordingly, if "at least" a knowing agreement to waive is required by Title VII, "at least" a knowing agreement to waive is required under the ADA.

[10] Our decision in *Lai* and the legislative histories of the Civil Rights Act of 1991 and the Americans with Disabilities Act of 1990 all suggest that the agreement may have to be both "voluntary and knowing" in line with the Supreme Court's discussion in *Alexander v. Gardner-Denver*. *See Lai*, 42 F.3d at 1305 (citing *Gardner-Denver*, 415 U.S. at 51-52 (discussing possible waivers of Title VII claims)); *see also* H.R. Rep. 102-40, pt. 1, at 97; H.R.Rep. No. 101-485, pt. 3, at 76-77; H.R. Conf. Rep. No. 101-596, at 89. Because we conclude that there was no "knowing" agreement here, we have no occasion to determine whether any such agreement must be "voluntary" as well or what that term might mean in the context of unilaterally promulgated employee handbooks.

that might be inconsistent with the terms set out in the Handbook. Indeed, the acknowledgment form itself suggests quite the opposite by characterizing the Handbook as a "guideline" to the company's unilaterally promulgated policies and procedures. Merely signing the form did not in any way constitute a "knowing agreement to arbitrate," and thereby to surrender his statutory right to a judicial forum.

Moreover, we conclude that Nelson's continued employment after he received the Handbook, and after he read it (and we assume he did), did not amount to the type of "knowing agreement" contemplated by *Lai*. Nothing in either the acknowledgment form or the Handbook itself put Nelson on notice that by not quitting his job he was somehow entering into an agreement to waive a specific statutory remedy afforded him by a civil rights statute. Any bargain to waive the right to a judicial forum for civil rights claims, including those covered by the ADA, in exchange for employment or continued employment must at the least be express: the choice must be explicitly presented to the employee and the employee must explicitly agree to waive the specific right in question. That did not occur in the case before us.

We conclude that, in line with *Lai*, the unilateral promulgation by an employer of arbitration provisions in an Employee Handbook does not constitute a "knowing agreement" on the part of an employee to waive a statutory remedy provided by a civil rights law. We conclude further that the right to a judicial forum is not waived even though the Handbook is furnished to the employee and the employee acknowledges its receipt and agrees to read and understand its contents. Finally, we hold that

the right is not waived even when the employee performs his obligations by commencing or continuing to do his assigned work and accepting a paycheck in return.[11] Accordingly, the district court erred in concluding that there was a valid waiver of Nelson's right to a judicial determination of his ADA claims and in granting summary judgment to the defendants.[12]

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[11] We also reject defendants' argument that "[t]he fact that Mr. Nelson initiated a complaint with the Company pursuant to the Problem Solving Process promulgated under the Employee Handbook" demonstrates a valid waiver. The case before us is entirely different from *Nghiem v. NEC Electronic, Inc.*, 25 F.3d 1437 (9th Cir. 1994). In that case, plaintiff wrote a letter to the NEC's Human Resource Director "requesting to proceed with Step Four of NEC's problem resolution process – final and binding arbitration," and then "attended the hearings with a representative, presented evidence, and submitted a closing brief of fifty pages." *Id.* at 1440. Here, Nelson did not request arbitration. Indeed, at least twice he expressly refused to initiate or participate in arbitration. *See supra* note 3.

[12] All of the cases cited by the dissent with respect to the "knowing waiver" issue, except one, relate to the question of whether state or federal law applies. Of those cases, only *Patterson v. Tenet Healthcare, Inc.*, 113 F.3d 832 (8th Cir. 1997), involves the waiver of a statutorily provided right or remedy, and we note, with respect to that case, that the Eighth Circuit has not adopted the "knowing waiver" standard that is the controlling law in this circuit. We also note that, as a general proposition, the waiver of a federal right is a question of federal law. *See, e.g., Stroman v. West Coast Grocery, Co.*, 884 F.2d 458, 461 (9th Cir. 1989) (citing *Salmeron v. United States*, 724 F.2d 1357, 1361 (9th Cir. 1983), and *Jones v. Taber*, 648 F.2d 1201, 1203 (9th Cir. 1981)). However, the question of which law is applicable is of no significance here; whether state or federal law applies, the answer is the same. The words, "I agree to read and understand" (an employee handbook) do not constitute an agreement to waive a remedy provided by Congress in a civil rights statute.

For the same reason that the court erred with respect to Nelson's ADA claims it erred with respect to his claims under the Arizona Civil Rights Act. In *Lai*, although plaintiffs brought their sexual harassment and discrimination claims under the relevant state statutes and did not sue directly under Title VII, we nevertheless examined the arbitrability of their claims under the Title VII "knowing agreement to arbitrate" standard. Noting that "[p]arallel state anti-discrimination laws are explicitly made part of Title VII's enforcement scheme," we held that the same standard would apply to both. *Lai*, 42 F.3d at 1303 n. 1 (citing *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982); and *Salgado v. Atlantic Richfield*, 823 F.2d 1322, 1326 (9th Cir. 1987)) The ADA expressly adopts Title VII's enforcement procedures, including the incorporation of parallel state anti-discrimination laws such as the relevant portions of the Arizona Civil Rights Act. *See* 42 U.S.C. § 12117. Accordingly, as in *Lai*, we hold that the question whether Nelson waived his rights under the ACRA is governed by the same standard as the question whether he waived his rights under the ADA. Given our conclusion with respect to the ADA claims, we must reverse as to the ACRA claims as well.[13]

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[13] Because the district court did not address Nelson's remaining state law claims separately and we are therefore uncertain as to the basis for its actions, and because the pertinent issues relating to those claims have not been adequately briefed on appeal, we vacate as to the other state law claims and leave to the district court the consideration in the first instance of their proper resolution in light of the decision we reach today. The parties also do not address Nelson's wife's claims separately. While we treat them, for purposes of this opinion, as if they were identical to Nelson's, we do not

III. CONCLUSION

Because we hold that Nelson did not knowingly waive his statutory rights to a judicial forum under the ADA and the Arizona Civil Rights Act, we reverse the decision of the district court granting summary judgment in favor of the defendants as to those claims and remand for further proceedings. We also vacate and remand as to the remaining claims.

REVERSED IN PART, VACATED IN PART and REMANDED.

RYMER, Circuit Judge, dissenting:

Both parties agree that employees *can* be bound by an agreement to arbitrate employment discrimination claims (including claims under the ADA) if they knowingly agree to do so. This much follows from *Prudential Insurance Co. v. Lai*, 42 F.3d 1299 (9th Cir. 1994), although Nelson does argue that employment contracts are exempt from coverage under the Federal Arbitration Act, 9 U.S.C. § 1. The majority opinion punts the coverage question, though it is unclear to me that it can be avoided since the arbitration provisions at issue in this case are in an Employee Handbook – not a securities registration application – and are binding (if at all) because they are part of Nelson's employment contract with Cyprus. *Cf. Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 25 n.2, (1991)

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foreclose the parties or the district court from considering any and all issues relating to those claims at the appropriate time in the proceedings.

(finding no need to address the scope of the § 1 exclusion as the arbitration clause being enforced was not in a contract of employment, but in Gilmer's securities registration application).

In any event, *Lai* indicates that an employee may only be obliged to arbitrate statutory claims such as those arising under Title VII if he or she has "knowingly agreed" to submit such disputes to arbitration. 42 F.3d at 1304. Neither Lai's U-4 form nor the U-4 manual described the types of disputes that were to be subject to arbitration, or referred to employment disputes. As there was no way that Lai could have understood that in signing the form, she was agreeing to arbitrate sexual discrimination suits, we held that Lai was not bound by any valid agreement to arbitrate employment discrimination claims. *Id.* at 1305.

Nelson's case cannot be so easily resolved, because Cyprus's Employee Handbook does specifically refer to arbitration of employment disputes including statutory claims and those arising under the equal employment opportunity laws.[1] The question, therefore, is whether the

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[1] It provides:

> "The Open Door Policy and the Complaint Resolution Policy . . . are the sole and exclusive procedures for the processing and resolution of any problem, controversy, complaint, misunderstanding or dispute that may arise concerning any aspect of your employment or termination of employment including any dispute arising out of or based upon any state or federal statute or law applicable to your employment . . . " (Employee Handbook, p. 57).

Employee Handbook, which Nelson acknowledged receiving and agreed to read and understand before it became effective, is a valid agreement to arbitrate employment disputes, including Nelson's ADA claim. Under *Lai*, this depends on whether Nelson "knowingly contract[ed] to forego [his] statutory remedies in favor of arbitration." *Id.*

The answer to this question, in turn, must depend on Arizona employment contract law. As the Supreme Court instructed in *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, (1995), "[w]hen deciding whether the parties decided to arbitrate a certain matter . . . courts generally . . . should apply ordinary state-law principles that govern the formation of contracts." *Id.* at 1924; *see also Doctor's Assocs., Inc. v. Casarotto*, 116 S.Ct. 1652, 1655

"The Open Door Policy and Complaint Resolution Policy are the sole and exclusive procedures for the processing and resolution of any problem, controversy, complaint, misunderstanding or dispute between an employee and Cyprus Bagdad. This includes . . . any claim that any state or federal statute or law applicable to your employment has been violated." (Employee Handbook, p. 10).

"The Complaint Resolution Policy is a somewhat more formal procedure [than the Open Door Policy] that includes a provision for arbitration in cases involving corrective action, discharge, or a claim that the Equal Employment Opportunity/Nonharassment Policy has been violated." (Employee Handbook, p. 10).

"The arbitrator shall have authority to decide statutory issues, including those arising under the equal employment opportunity laws." (Employee Handbook, p. 13).

(1996) (noting that state law "concerning the validity, revocability, and enforceability of contracts" governs agreements to arbitrate); *Patterson v. Tenet Healthcare, Inc.*, 113 F.3d 832, ___, 1997 WL 236237, at *1 (8th Cir. 1997) (following *First Options* and interpreting arbitration agreement in light of state law); *Webb v. Investacorp, Inc.*, 89 F.3d 252, 258 (5th Cir. 1996) (same); *Cogswell v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 78 F.3d 474, 478 (10th Cir. 1996) (same); *Doctor's Assocs., Inc. v. Distajo*, 66 F.3d 438, 452 (2d Cir. 1995) (same).

The district court noted that Arizona law recognizes that an employee handbook may be incorporated into an employment contract. *See, e.g., Leikvold v. Valley View Community Hosp.*, 688 P.2d 170, 174 (Ariz. 1984) (en banc). It found that Nelson's affidavit did not raise a genuine issue of fact regarding whether he knowingly and voluntarily contracted away his right to file a statutory discrimination claim in court, and concluded that Nelson was subject to the arbitration clause in the Employee Handbook.

Nelson, of course, contends that he did not knowingly and voluntarily enter into the arbitration clause, but he raises no issue on appeal, and doesn't argue, that the district court's conclusion was erroneous under Arizona law. For that reason, there is no need for us to go further.

The majority opinion's entire discussion about "knowing agreement," *supra* at 8128-30, is thus dicta and, beyond that, without persuasive force as it is also entirely without citation to authority. I therefore dissent.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MELTON NELSON; LANITA NELSON Plaintiffs-Appellants, v. CYPRUS BAGDAD COPPER CORPORATION; CYPRUS AMAX MINERAL COMPANY; RANDY SCOTT, husband; JANE DOE SCOTT, wife; GARY HUTCHINSON, husband; KATHLEEN HUTCHINSON, wife, aka Jane Doe Hutchinson; JANETTE BUSH, wife; JOHN DOE BUSH, husband; JOSEPH MORTIMER, husband; JANE DOE MORTIMER, wife; JACK MCKEON, husband; JANE DOE MCKEON, wife; PAUL AUSTIN, husband; JANE DOE AUSTIN, wife; RAYMOND BRAMLETT, husband; JANE DOE BRAMLETT, wife; LLOYD FLANNIGAN, husband; JANE DOE FLANNIGAN, wife, Defendants-Appellees.	No. 95-17083 D.C. No. CV-95-00237-SMM ORDER (Filed Oct. 6, 1997)

Before: REINHARDT and RYMER, Circuit Judges, and TANNER, District Judge.*

A majority of the panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc. The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

---

* The Honorable Jack E. Tanner, Senior United States District Judge for the Western District of Washington, sitting by designation.

NOT FOR PUBLICATION

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Before: REINHARDT, Circuit Judge

Upon due consideration of appellees' motion for stay of mandate pending petition to the Supreme Court for a writ of certiorari, such petition to be filed within 90 days of this order,

IT IS ORDERED that the motion for stay of mandate be granted. In the event that the petition for writ of certiorari is timely filed, "the stay shall continue until final disposition by the Supreme Court." Fed. R. App. P. 41(b).

9 U.S.C. § 2

§ 2 Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration on existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

CYPRUS BAGDAD COPPER CORPORATION

EMPLOYEE HANDBOOK

LOGO CYPRUS
Bagdad Copper

Cyprus Bagdad Employee Handbook
Rev – Effective 07/01/93

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WELCOME TO CYPRUS BAGDAD COPPER CORPORATION

It is a pleasure to welcome you to your new job with Cyprus Bagdad Copper Corporation. Although we are part of a large company, the spirit of working together toward a common goal has not been lost.

Occasionally, questions concerning our company or your job will arise, and with that thought in mind, we have attempted to answer many of them with this handbook.

Cyprus Bagdad intends to continue to improve our quality of work life. Two areas that are crucial for this to be a successful effort are employee involvement and communications. Everyone's contribution here is important. We are individuals who contribute to the team effort. To keep

improving our operation, never accept existing conditions as "good enough." Seek safer, more efficient methods to accomplish your work. Work smarter. Talk about your ideas. Listen to your co-workers. Accept and look forward to change.

This handbook is written for all Cyprus Bagdad employees. It is a guide to the procedures, policies and philosophy by which we operate. This handbook may be periodically changed to keep pace with changing conditions. You will be notified of any changes. As you receive updated information about policies, please insert them in this Handbook. When any provisions of this Handbook are changed, the modified provisions will apply to your employment upon their effective date.

If you have any questions, you are encouraged to ask your supervisor, or any member of management about items covered in this Handbook, or other information concerning Cyprus Bagdad policies and practices as they apply to you and your job.

You will find Cyprus Bagdad Copper Corporations and Cyprus Minerals Company, our parent corporation, share histories that include change and adaptability. An interesting and challenging experience awaits you as an employee of Cyprus Bagdad. Our wishes are that you enjoy your employment here and that your experiences contribute to a successful career at Cyprus Bagdad.

Cyprus Bagdad
Management and Employees

* * *

PROBLEMS SOLVING PROCESS

We have a large, integrated, complex operation. As a result of being human and working together in a large, complex operation, problems are occasionally going to arise and these problems must be resolved.

At Cyprus Bagdad, we have two procedures, an Open Door Policy and a Complaint Resolution Policy, to address and resolve the problems that occasionally arise. The Open Door Policy and the complaint Resolution Policy enable us to address any problems which may arise.

The Open Door Policy is designed to address everyday problems quickly and informally. The Complaint Resolution Policy is a somewhat more formal procedure that includes a provision for arbitration in cases involving corrective action, discharge, or a claim that the Equal Employment Opportunity/Non-harassment Policy has been violated. You may use either the Open Door Policy or the Complaint Resolution Policy or, if you prefer, both of them, as long as you follow the established procedures.

The Open Door Policy and the Complaint Resolution Policy are the sole and exclusive procedures for the processing and resolution of any problem controversy, complaint, misunderstanding or dispute between an employee and Cyprus Bagdad. This includes any claim that the provisions of this Handbook have been violated and any claim that any state or federal statute or law applicable to your employment has been violated.

Open Door Policy

Our Open Door Policy at Cyprus Bagdad works. Here are the key principles of our Open Door Policy:

- To be open and above board with our employees.
- To be honest in addressing employee concerns and complaints.
- To be responsive to employee concerns by replying to them promptly after an employee meets with his supervisor about the matter.
- To be willing to provide access to any level of supervision (including, if necessary, bringing a problem to the Vice President) in order to address a problem or complaint.

Whenever possible, we strive to resolve problems or concerns at the first line supervisor level where the details and issues are often better understood. An essential part of your supervisor's job is to work through problem situations so all of us can focus on our work without unnecessary complications. However, at times you may wish to speak with someone other than your supervisor – perhaps a member of the Human Resources Department or even the Vice President. If you do, please come by the Human Resources Department and arrangements will be made for you to meet with any member of the management team who can address your problem or concern.

Our Open Door Policy is basic. We will be honest with you and we trust that you will do likewise.

Complaint Resolution Policy

If you wish to have your problem or complaint addressed through the Complaint Resolution Policy, you are welcome to do so. To use the Complaint Resolution Policy, you proceed as follows:

1. **Submitting Complaint**

   Your complaint must be in writing and submitted to your supervisor within 10 calendar days of the occurrence that gave rise to your problem. Your written complaint should include a description of the problem with a copy given to the Human Resources Department. If you would like assistance in writing the description of your problem, your human resources representative is available to assist you.

   Your supervisor will arrange for a meeting to discuss your complaint and will provide you with a written response. During this discussion, it is important that you are completely open and honest – "lay your cards on the table." That is the best way for your supervisor to understand your problem.

   In most cases, you will be able to resolve your problem by discussing it with your supervisor. If, however, you are not satisfied with your supervisor's response, you may appeal to your department manager. The appeal of your supervisor's response must be submitted within 5 calendar days after you receive that response.

2. **Appeal to Department Manager**

   You [sic] appeal to the department manager must be in writing, and a copy must be given to the Human Resources Department. If you would like assistance in writing the appeal, your human resources representative is available to assist you.

   Your department manager will arrange for a meeting to discuss your appeal and will provide you with a written response to your appeal. If you are not satisfied with your department manager's response, you may appeal to the Vice President. The appeal of the department manager's response must be submitted

within 5 calendar days after you receive that response.

3. **Appeal to the Vice President**

Your appeal to the Vice President must be in writing, and a copy must be given to the Human Resources Department. If you would like assistance in writing the appeal, your human resources representative is available to assist you.

The Vice President will arrange for a meeting to discuss your appeal and will provide you with a written response to your appeal. Except in cases involving corrective action, discharge, or a claim that the Equal Employment Opportunity/Non-harrassment policy has been violated, the Vice President's decision is final. If you are not satisfied with the vice President's response in cases involving corrective action, discharge, or the Equal Employment Opportunity/Non-harassment policy, you may appeal to arbitration.* The appeal to arbitration must be in writing and must be submitted to the Human Resources Department within 10 calendar days after you receive the Vice President's response to your appeal.

If your problem or complaint concerns your discharge, a written description of the problem should be submitted directly to the Vice President, with a copy given to the Human Resources Department, within 10 days of the date you are notified of your discharge.

If your supervisor, the department manager or the Vice President are not available to handle your problem or appeal, someone will act for them in handling it.

4. **Arbitration***

Unless the employee and the Company agree otherwise, the Company will request a list of arbitrators from the American Arbitration Association (AAA) after it receives an appeal to arbitration. The selection of an arbitrator and the arbitration will be conducted pursuant to the rules of the AAA.

* Arbitration is not available for the Vice President and General Manager.

The arbitrator shall have authority to decide statutory issues, including those arising under equal employment opportunity laws. Except in a case where there is a conflict with applicable law, the arbitrator shall have no authority to change, add to, subtract from, or limit the Company's policies, procedures, rules, regulations or the provisions of this Handbook, and any decision which does so is void. In the case of an employee who is disciplined or discharged for a violation of Rule 3 of the Rules of Conduct, the arbitrator's authority shall be limited to deciding any statutory issues and to deciding whether the employee violated the rule. The decision of the arbitrator shall be final and binding on the parties.

The Company will pay the cost normally associated with arbitration, with the exception of $300.00, which is the employee's portion of the cost of the arbitration. The employee must pay the $300.00 at the time that the appeal to arbitration is submitted. If an employee obtains all of the relief she sought in arbitration, the Company will reimburse the $300.00 paid by the employee. The employee will bear any costs associated with her witnesses, except that if the witnesses are Cyprus Bagdad employees, are legitimately and responsibly called as witnesses, and miss regularly scheduled work, the Company will pay

them for up to 2 days of work they necessarily miss as a result of being called as witnesses.

Should an employee desire to be represented by an attorney who is licensed to practice in Arizona, the Company will compensate the attorney for actual and reasonable attorney's fees up to a maximum of $3,000.00 The fees will be paid after receipt of the arbitrator's decision and an appropriate statement from the attorney. The employee shall select the attorney.

Some points that you should be aware of to help you with the resolution of your problem are:

- You may have a co-worker with you during any meeting to assist you in any way, to present additional information.

- If you do not feel your concern can or should be discussed with your supervisor, you should discuss the matter with a member of the Human Resources Department.

- Any matter taken to a member of your Human Resources Department will be held in strict confidence and will not be discussed with your supervisor or management unless you specifically agree to it. However, nondisclosure may limit management's ability to help resolve your problems.

- It is our commitment to respond to any questions or concern you have as soon as practical. If a solution cannot be implemented immediately, you will be informed.

* * *

SCOPE OF HANDBOOK

No employee or representative of Cyprus Bagdad or any related entity has any authority to make or attempt to make any oral, written or implied agreement or binding commitment concerning your employment that is contrary to or in excess of the provisions contained in the Employee Handbook. The Open Door Policy and the Complaint Resolution Policy described in this Handbook are the sole and exclusive procedures for the processing and resolution of any problem, controversy, complaint, misunderstanding or dispute that may arise concerning any aspect of your employment or termination of employment, including any dispute arising out of or based upon any state or federal statute or law applicable to your employment, and including any dispute concerning a claim that the provisions of this Handbook have been violated. You are precluded from filing any action with any court concerning any matter which could have been addressed through these procedures.

* * *

Copy A

CYPRUS BAGDAD COPPER CORPORATION
EMPLOYEE HANDBOOK
EMPLOYMENT PRACTICES AND GUIDELINES

This Handbook is subject to amendment, modification or termination at the Company's sole discretion. If any provisions of the Handbook are changed, you will be notified of the changes, and the modified provisions will apply to your employment upon their effective date.

If the provisions of this Handbook are in conflict with any Company policy, procedure or plan, such policy, procedure or plan will govern.

This handbook is intended as a guideline to help employees know and understand the general practices applicable to them while employed at Cyprus Bagdad.

This revised version of the Cyprus Bagdad Employee Handbook supersedes all prior versions that have been issued by Cyprus Bagdad and will be effective July 1, 1993. Amendments or modifications, if they occur, will be distributed with the proper effective date and should be inserted into this handbook.

I have received a copy of the Cyprus Bagdad Copper Corporation Handbook that is effective July 1, 1993 and understand the Handbook is a guideline to the Company's policies and programs. I agree to read it and understand its contents. If I have any questions regarding

its contents I will contact my supervisor or my Human Resources Representative.

Date _____ Name _____

Signature _____

Copy A – Remains in Handbook

Copy B – File Copy

Copy B

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Date 6-23-93 Name George Nelson

Signature /s/ George Nelson

Copy A – Remains in Handbook

Copy B – File Copy